

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
APPENDIX**

Original & Affidavit of Mailing

77-2080

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Docket No. 77-2080

FRANCISCO SOLIMENE,

Appellant,

-against-

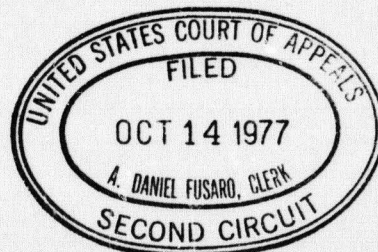
UNITED STATES OF AMERICA,

Appellee,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPELLEE'S APPENDIX

DAVID G. TRAGER
United States Attorney,
Eastern District of New York.



PAGINATION AS IN ORIGINAL COPY

THE COURT: Yes.

CROSS EXAMINATION

BY MR. ROSENBERG:

Q Mr. Altamirano, you indicated yesterday that you were convicted of a crime; is that correct?

A Yes.

Q How many crimes were you convicted of?

A Conspiracy.

Q Was that the only crime that you were convicted of?

A Yes.

Q Now, the conspiracy that you were convicted of, is that related to conspiracy to import the same one hundred and fifty-five pounds of heroin; is that correct?

A Yes.

Q Who was on trial with you?

A My brother Cesar.

Q And who else?

A Mr. San Martin, Mr. Raphael Richard, Nicholas Polanco, and Guillermo Gonzalez.

Q Now, when you were convicted and before sentenced, did you know how many years in jail you were facing on the charge?

A What do you mean?

1
2 Q Before you were sentenced -- before you were
3 sentenced, did you know what the maximum the Judge could
4 impose upon you for your conviction in that crime?

5 A Yes.

6 Q How much was that?

7 A According to my lawyer, from zero years to fifteen
8 years.

9 Q Now, after you were convicted, and before the
10 Judge imposed the sentence, you had a conversation with
11 certain agents with respect to this case; is that correct?

12 A Yes.

13 Q And after you had that conversation and you
14 agreed to cooperate with the Government, it was at that time
15 the Judge then imposed only two years on your sentence; is
16 that right?

17 MR. BASHIAN: I object to the form of
18 the question.

19 THE COURT: Yes. Restate the question
20 so it's clearer.

21 MR. ROSENBERG: All right, Judge.

22 Q When you cooperated with the Government, was
23 that made known to the Judge in any way?

24 A Yes.

25 Q This was before the Judge imposed the sentence;

1 is that right?

2
3 A Yes.

4 Q And after the Judge imposed -- after the Judge
5 received that information, he then imposed a two year
6 sentence on you; is that right?

7 A Yes.

8 Q Now, on your first trial -- on your trial wherein
9 you were charged with the same conspiracy to import a hundred
10 and fifty-five pounds of heroin, throughout that trial, the
11 entire trial, was the name of Louis Boyce or Francesco
12 Solimene mentioned once?

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14 (Continued on next page.)
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Altimarino-cross-Rosenberg

bit?

THE WITNESS: More or less.

Q Where did you learn Italian?

A My parents are Italian and they used to speak Italian to me.

Q Now, you stated yesterday that you knew Felice Bonetti for about six years; is that correct?

A Six, seven years, yes.

Q Where did you meet Felice Bonetti for the first time?

A In Argentina.

Q Can you tell us the circumstances under which you met Bonetti for the first time?

A Yes.

Q Tell us.

A We were neighbors.

Q When you were living in Argentina?

A Yes, at my parents' home.

Q Did Bonetti visit you at your parents' home six years ago?

A Yes, frequently he would come to my home and I would go to his home.

Q Did Bonetti work in Argentina during the time that he was there?

3 1 A Yes.

2 Q What kind of work was he doing?

3 A He was a salesman.

4 Q What kind of work were you doing at that time?

5 A I was employed in a factory.

6 Q When did Bonetti leave Argentina?

7 MR. BASHIAN: Can we specify a time?

8 THE COURT: He is getting a date right
9 now.

10 Read the question back to the witness.

11 (Record read.)

12 THE WITNESS: I don't know. I was the
13 one who left.

14 Q When did you leave Argentina?

15 A It was approximately some six years ago.

16 Q Where did you go?

17 A To Uruguay.

18 Q Did you live in Uruguay for the six years?

19 A Yes.

20 Q Now, when you knew Bonetti in Argentina six
21 or seven years ago how often would you see each other during
22 the course of the year that you saw each other -- during the
23 year that he was living down there?

24 Withdrawn.

25 When you were in Argentina with Bonetti how

Altamarino - cross-Rosenberg

long a period of time did you socialize before you moved outside the country?

A Several months.

Q After the several months, you then left to go to Uruguay and you didn't see him again until you came to this country; is that right?

A No.

Q When did you see Mr. Bonetti again after you left to go to Uruguay?

A Some four months later, after I had left for Uruguay.

Q Where did you meet him?

A It was in a harbor because he was working with a fishing boat.

Q Was that an accidental meeting?

A Yes.

THE COURT: Let me ask you this: The country of Uruguay touches Argentina?

THE WITNESS: Yes.

THE COURT: And where were you staying in Uruguay?

THE WITNESS: In Montevideo.

THE COURT: How far is Montevideo in Uruguay from Buenos Aires in Argentina?

THE WITNESS: Half hour by plane.

5 Altamarino - cross-Rosenberg

BY MR. ROSENBERG:

Q When you met him accidentally, how much time did you spend with him?

A We were working together.

Q For how long?

A Approximately one year.

Q After that year did Bonetti leave to come to this country?

A No, he continued working there. He would go to Argentina and come back.

Q Where did you go?

A I was living in Uruguay. The one who would go back and forth was Felice.

Q How long during the course of these next several years did you meet him on his up and back trips?

A How much time, you mean?

Q I will withdraw the question. There came a time when you came to this country; is that right?

A Yes.

Q When was that?

A It was November of 1970.

THE COURT: Was that the first time that you came to the U. S.?

THE WITNESS: Yes.

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2 Customs Service and the Bureau of Narcotics,
3 has reported back to Mr. McMullan with the
4 report that nobody from the Bureau of Narcotics
5 has ever interviewed either one of the Altamirano
6 brothers and they have no reports for that
7 reason.

8 THE COURT: Do you have anything further
9 on that score?

10 MR. BASHIAN: I think we have reached
11 the bottom of the 3500 question as far as
12 Americo Altamirano is concerned, Judge.

13 MR. KRIEGER: Sir, on another matter,
14 if your Honor please --

15 THE COURT: No, let's stay with this
16 until we are finished.

17 MR. KRIEGER: I accept Government's
18 representation.

19 THE COURT: All right, the matter was
20 closed. It will not then be reopened. I am
21 referring to the 3500 proceeding.

22 Now, what is the other matter?

23 MR. KRIEGER: If your Honor please,
24 I am informed that this defendant has a criminal
25 record in South America. I have asked the



1
2 United States Attorney for a copy of the
3 criminal record. The United States Attorney
4 has stated that they had no such knowledge.

5 I submit, your Honor, that a mere
6 negative presentation that they have no
7 such knowledge scant avails the defendant.
8 It becomes impossible for me in these brief
9 days to contact -- or to obtain information
10 from the police of either Argentina or Uruguay
11 as to this man's criminal record.

12 Now, in the initial case report there
13 was a notation that the Bureau of Narcotics
14 was to contact all foreign police agencies
15 with respect to the criminal records of this
16 defendant.

17 May I inquire as to whether any report
18 has come to the Bureau of Narcotics?

19 MR. BASHIAN: Mr. Krieger, firstly
20 it is not the Bureau of Narcotics, it's the
21 United States Customs Service.

22 MR. KRIEGER: No.

23 MR. BASHIAN: Secondly, Mr. McMullan
24 would be happy to either take the stand, if
25 that's what you want, or tell you from his

10

1 bench, from where he is seated, as to the results
2 of the inquiries they made.
3

4 MR. KRIEGER: I refer to Agent
5 McMullan's report --

6 THE COURT: What is it you want,
7 counselor?

8 MR. KRIEGER: I want to have his
9 complete criminal record --

10 MR. BASHIAN: You will get it.

11 MR. KRIEGER: ---in Argentina and/or
12 in Uruguay.

13 MR. BASHIAN: Don't get upset. I think
14 Mr. McMullan can answer the questions. That's
15 what I am saying. If you give him a chance to
16 speak.

17 THE COURT: Is there any criminal
18 record?

19 MR. MC MULLAN: No, your Honor.

20 THE COURT: There is no criminal record?

21 MR. MC MULLAN: No.

22 THE COURT: So this witness is going to
23 go to this Jury as a man of integrity, pure
24 as driven snow? I can recognize the point that
25 the attorney makes for the purpose of having

1
2 it overruled in order to preserve something
3 for appeal.

4 You have heard enough from this fellow
5 to hang fourteen witnesses, not one.

6 All right, you say there is none?

7 Counselor, if you find any such record
8 tell me about it and I will do the best I can
9 to facilitate your getting further informa-
10 tion.

11 MR. BASHIAN: Can I have --

12 THE COURT: I doubt that when you get
13 that information it will bring this witness
14 any closer to being an, oh, a Sunday School
15 teacher. He didn't work Sundays, you know.

16 MR. BASHIAN: Your Honor, can I respect-
17 fully ask Mr. McMullan with the Court's per-
18 mission to make a statement as to exactly what
19 he did so that Mr. Krieger and the other attorney
20 will be enlightened as to exactly what was done?

21 THE COURT: Well, before he makes the
22 statement I will tell you that what I was saying
23 was said from a heavy heart at the end of a long
24 day.

25 I am a little tired. But it was not

12

original with me. It's been said any number of times by the Court of Appeals, which points to a record, that indicates in a that record, it appears as strongly as anybody could want to have it, that the witness leaves a lot to be desired in the way of integrity, honesty, character of being law abiding and so forth, and therefore any additional proof of criminality is so to speak "gilding the lily," to coin a phrase.

MR. BASHIAN: Can Mr. Mc Mullan, with the Court's indulgence simply state very briefly what he did do, Judge?

THE COURT: I don't know if he wants it. He probably doesn't want it.

MR. KRIEGER: Sure, I want everything.

MR. BASHIAN: I think he'd like to know. He has a right to know.

MR. KRIEGER: Well, you can give it to me tomorrow morning.

MR. BASHIAN: Let's say it on the record.

MR. KRIEGER: All right, give it to me now.

What did you do, have you contacted

Interpol?

MR. MC MULLAN: When it was determined that San Martin's passport was a false passport his fingerprints, the fingerprints of the Altamiranos, the fingerprints of Richard, Gonzalez and Palanco were sent to South America.

The Argentine Police sent back a cable stating that the fingerprints of SanMartin were in fact not San Martin's fingerprints, were the fingerprints of a Benito Brondabit. That there was no criminal records on file for Benito Brondabit or Jose SanMartin. That there was also no criminal record on file for Rubin Altamirano or Cesar Altamirano.

THE COURT: You know you say something which interests me. You know, after all, I did try San Martin's case. You say the fingerprints on the passport were not his fingerprints?

MR. MC MULLAN: Yes, your Honor.

MR. BASHIAN: That fact came out at the trial, Judge, if you recall.

THE COURT: Well, I know that. But they were the fingerprints of Brondabit.

MR. MC MULLAN: No, they were not

1
2 Brondabits' fingerprints but they were the
3 fingerprints of a Jose San Martin.

4 THE COURT: Oh, not this Jose?

5 MR. MC MULLAN: Yes, sir.

6 THE COURT: I thought you were getting
7 it the other way around because he claims
8 to be Brondabit.

9 MR. MC MULLAN: Right.

10 THE COURT: Is there anything else
11 you want?

12 MR. KRIEGER: What about Uruguay,
13 please? Did you contact them?

14 MR. MC MULLAN: A report was sent to
15 Interpol and there was no record of any of
16 these people that were arrested.

17 MR. KRIEGER: May I respectfully,
18 your Honor --

19 THE COURT: You keep on inquiring
20 so respectfully, I am almost inclined to give
21 you an equal respect.

22 MR. KREIGER: All right, any record
23 of a commitment in a mental institution of
24 this witness, or any psychiatric treatment?

25 THE COURT: That you will have to,

1
2 I suppose, develop through interrogation
3 of the witness, and unless he is hallucinating
4 very strongly, I would classify him as one
5 of the better witnesses we have.

6 MR. KRIEGER: I take it the Govern-
7 ment --

8 THE COURT: He seems to give his answers
9 rather quickly, connectedly and "si" or "non"
10 without any hesitancy.

11 MR. KRIEGER: I take it you have no
12 information?

13 MR. BASHIAN: You would have got it,
14 Mr. Krieger. Believe me, under Brady v.
15 Maryland, you would have gotten it.

16 THE COURT: And I admonish the Govern-
17 ment under Brady v. Maryland not to hold back
18 any information that you have --

19 MR. BASHIAN: No.

20 THE COURT: -- particularly information
21 that would be derogatory of this witness.

22 And counselor, one of the strongest
23 charges that I make is with respect to the
24 testimony of this nature.

25 MR. KRIEGER: Yes, sir.

1
2 THE COURT: You will have nothing --
3 I am sure you will have nothing to take an
4 to
5 exception/with respect to my charge on how
6 a witness under these circumstances should
be assessed.

7 MR. KRIEGER: Thank you, sir.

8 THE COURT: So that's covered.

9 MR. KRIEGER: Thank you, sir.

10 (Whereupon, at 4:35 o'clock p.m. Court
11 adjourned to Thursday, March 16, 1972.)
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Cross-Altamirano-Krieger

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2 A I think it was in the month of May, the month of May
3 of last year.

4 THE COURT: May 1971?

5 THE WITNESS: Yes.

6 Q And you began to use cocaine in May of 1971?
7 How much did you then use?

8 A Very little. More or less like the quantity you have
9 in the paper.

10 Q And did you ever buy cocaine from anyone other
11 than Robert --

12 THE COURT: That's irrespective of
13 whether you bought it for yourself or were
14 dealing in it.

15 THE WITNESS: No.

16 Q Have you ever smoked marijuana?

17 A No.

18 Q Have you ever used heroin?

19 A No.

20 Q Have you ever used hasish?

21 A No.

22 Q Have you ever used any amphetamines or any
23 narcotic pills?

24 A No.

25 Q Where were you born?



Cross-Altamirano-Krieger

1
2 A I --

3 THE COURT: Born?

4 A In Saldo, Uruguay.

5 Q How long did you reside in the Republic of
6 Uruguay?

7 A Many years.

8 Q How old are you now?

9 A 30 years.

10 Q When did you leave Uruguay?

11 A When I was little.

12 Q Do you recall the age -- do you recall how old
13 you were when you left Uruguay?

14 THE COURT: For the first time.

15 THE WITNEES: I was then at the primary
16 school and I was taken then to Argentina.

17 Q And how long did you then stay in Argentina?

18 A Several years.

19 Q When did you first leave Argentina?

20 THE COURT: That's permanently; you mean?
21 You don't mean taking a trip out of the country.

22 MR. KRIEGER: That's correct, your Honor.

23 THE COURT: Permanently, when did he
24 permanently first leave the country?

25 THE WITNESS: Well, permanently I left

several times because I would live in Argentina
and then I would live in Uruguay for a time,
return.

THE COURT: You're saying live, not leave.
Live.

THE WITNESS: Yes.

THE COURT: That word is, "Live" not
"Leave."

(Continued on the next page.)

Cross-Altamirano-Krieger

Q In what year did you first come to the United States of America?

A In November 1970.

Q Were you ever convicted of a crime in the Republic of Argentina?

A No.

Q Were you ever convicted of a crime in the Republic or Uruguay?

A No.

Q Did you ever kill a man in the Republic of Argentina?

THE COURT: Look, let's make it the whole universe. Did you ever kill a man?

THE WITNESS: No.

Q What kind of a visa did you have when you came to the United States?

A A transit visa.

Q Did anybody tell you that you could work in the United States while you had such a visa?

A Nobody said nothing to me.

Q Now, when you were arrested did you tell the police officers where you lived?

A Yes.

Q What address did you give them?

Cross-Altamirano-Krieger

THE COURT: All right, then go ahead.

You may question him further in that regard.

But the Jury is instructed that from your questions no proof can come.

MR. KRIEGER: Oh, certainly, your Honor.

THE COURT: It will have to be through witnesses --

MR. KRIEGER: By all means, sir.

THE COURT: -- Who take the stand.

MR. KRIEGER: By all means, sir.

THE COURT: Now go right ahead.

BY MR. KRIEGER: ~

Q Do you have any invoices as to any goods that you bought?

A No.

Q Do you have any receipts for any of the goods that you sold?

A No.

Q Did you pay taxes on any of the goods that you claim you bought?

A You mean if I paid taxes?

Q Did you pay taxes on any of the goods that you claim you bought?

THE COURT: You mean sales taxes?

2 THE COURT: You mean sales taxes?

3 MR. KRIEGER: Yes, sir.

4 THE WITNESS: No.

5 Q Did you collect sales tax on any of the goods
6 that you sold?

7 A No.

8 Q Did you pay income taxes on any moneys that
9 you may have made as a result of selling goods?

10 THE COURT: During what period, counselor?

11 MR. KRIEGER: 1970, your Honor, sir.

12 THE WITNESS: No.

13 Q Now, when you were arrested on July 9, 1971
14 did you tell the arrest officers that you were innocent?

15 A No.

16 Q Did you tell any of the arresting officers what
17 you have told this Court and Jury in this trial?

18 A Well --

19 MR. BASHIAN: Specify the time, Judge.

20 THE COURT: In what period?

21 Q In July, 1971, your Honor.

22 THE COURT: I see. All right.

23 THE WITNESS: When?

24 Q July 1971.

25 THE COURT: The month in which he was

(In the presence of the Jury.)

THE COURT: And that was before you were actually sentenced; is that correct?

THE WITNESS: Yes.

Q You did not testify at your trial, did you?

A No.

Q Do you know that your brother testified at the trial?

MR. BASHIAN: Objection as not relevant.

THE COURT: Overruled, I will allow it.

That is an introductory question.

A Yes.

Q Did you tell your brother what to say at the trial?

A No.

Q Did your brother ever discuss his testimony with you prior to his testifying at the trial?

A No.

Q Were you and your brother together in the Federal House of Detention before he testified?

A Yes.

Q Did you discuss the case with him before he testified?

A I spoke many times.

1
2 MR. BASHIAN: No.

3 THE COURT: He is not going to testify?

4 MR. BASHIAN: No.

5 THE COURT: Do you want Cesar to testify?

6 MR. KRIEGER: May I defer answering that
7 question at the moment, your Honor?

8 I would propose bringing forth as part
9 of this man's consideration for testifying
10 that the Government will not prosecute his
11 brother for perjury because his brother committed
12 perjury before your Honor.

13 THE COURT: He committed perjury?

14 MR. KRIEGER: Yes.

15 THE COURT I suppose that is the first
16 time it happened? I do not mean in his case,
17 but I mean in any case.

18 MR. BASHIAN: That is not part of any
19 understanding, your Honor. That is news to me,
20 as Mr. Krieger now announces it.

21 This is not proper cross examination.

22 MR. KRIEGER: I say it most respectfully is,
23 your Honor.

24 THE COURT: You will not get before the
25 Jury through indirection that he sat at the counsel

table while his brother testified. That is a little, shall I say, unfair.

MR. KRIEGER: I do not want to be unfair. But I would want to ask whether this witness has received as part of the consideration for testifying for the Government a promise or representation that no action will be taken against his brother.

THE COURT: I suggest you can go into the question of his consideration for testifying -- I know you have your own technique -- but with two defendants on trial, one taking the stand, he is not accountable for what his brother did. But from what you say, if his brother committed perjury and that is part of the promise, I suppose it is admissible.

However, first show that promises were made so I can assess the situation better. You are sort of backing into the situation.

MR. BASHIAN: May I make a statement, your Honor?

THE COURT: Yes.

MR. BASHIAN: I have revealed to Mr. Krieger the entire extent of the Government's

1
2 cooperation -- the Government's promise to this
3 witness in this case.

4 Now, there have been no promises that
5 have been made to offer this witness or to
6 Mr. Cesar Altamirano that he wouldn't be
7 prosecuted for perjury.

8 THE COURT: He has a right -- your
9 adversary has a right to bring to the Jury's
10 attention that the house is in danger of
11 collapsing right on his brother's head, and
12 that one of the considerations was that the
13 Government would shore up that house and it
14 would not fall on him, the collapse being of
15 course a prosecution for perjury.

16 MR. BASHIAN: There was no promise made.

17 THE COURT: But he has a right to bring it
18 to the Jury's attention.

19 MR. BASHIAN: Then you are letting in
20 by indirection that his brother testified in a
21 different manner than Mr. Altamirano is testifying
22 now.

23 THE COURT: That comes as no surprise to me.
24 And just using that word "noisome" that Judge
25 Friendly found appropriate in his Court of Appeals

Summation - Rosenberg

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Altamirano, let's find out whether or not this Altamirano that the Government built their 19 witnesses about -- this whole case, whether he meets these standards which the law says exist in this courtroom and which you must follow.

Altamirano, his brother and several others were convicted of the very same conspiracy, to import 155 pounds of heroin into this country. Altamirano was convicted of that. Altamirano had a little bit of a working knowledge with respect to how that heroin came into this country.

At his trial, no name of Solimano, no name of Boyce ever entered into the evidence. They never heard of those two people.

Now, he gets convicted and he is facing 15 years in jail. He wants to find out for himself how, instead of 15 years, can I get two years? How can I give up, so to speak, who can I create a story about because mind you, throughout this entire trial, there is only Altamirano who said that Solimano committed a crime. It was only Altamirano who said that Boyce committed a crime. So as you sit here,

it is beginning to come down whether or not you want to believe him or disbelieve him. It is only Altamirano who said that Solimene left the country for an illegal purpose. It is true he left the country, but if he went to Florida instead of leaving the country, Altamirano would have said he left for Florida for an illegal purpose, because nobody came into this courtroom and said other than Altamirano that Solimene left this country for an illegal purpose.

(Continued on the next page.)

EK:bc
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Summation - Rosenberg

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MR. ROSENBERG: (Continuing) Now, you know this is not a Perry Mason television show where the witness gets on the stand and after brilliant cross examination he collapses and says, "I lied." It doesn't happen that way in real life.

There were a lot of times throughout the day and a half that I cross examined him where you might have said to yourselves that perhaps I am going into picayune little things, that you didn't break him down. But it doesn't work that way. The points that I wanted to elicit on the cross examination were merely to show you inconsistencies, and if I show you those inconsistencies or the improbabilities of Altamirano's story, then you have a right to reject that portion of it or his entire testimony.

Let us go to what he tells us:

He tells us that on occasion he meets Bonnetti, that he met Bonnetti for the third time, that he had known Bonnetti prior to this time about 5, 6 years ago. When I first met him in this country I met him for the first time by accident.

And what does he have you believe took place:

1
2 On the first occasion that he met Bonnetti,
3 Bonnetti had him driving around with narcotics
4 in the car; he had you believe that Bonnetti is
5 a big wheeler-dealer with respect to narcotics,
6 but on the first occasion that he meets him he
7 is driving him around with narcotics.

8 Now does this sound credible to you that
9 a big wheeler-dealer, a big importer of narcotics
10 meets an Altamirano on his first occasion without
11 knowing whether or not Altamirano has any
12 proclivities for crime, and who divulged to him
13 that, I am involved in narcotics, I am facing
14 years of my life in jail? Is he going to tell it
15 to Altamirano?

16 You say, "Well, how important is it?"
17 And I will tell you how important it is, because
18 when Altamirano got convicted in order for him to
19 be able to say to the Government, I have got
20 information for you, get me two years in jail,
21 recommend to the Judge to get me two years in
22 jail, I have got information.

23 So what does he tell you? He tells you,
24 I was with Bonnetti, and Bonnetti was dealing
25 with narcotics on that occasion.

says his brother was there, his brother was there to another narcotics transaction.

Why wasn't his brother brought in to say, Yes, I was there, I helped count \$280,000, I know about this crime.

Well, because maybe he won't stand the test of cross examination.

Now we do have a standard with respect to believable, credible testimony, and I will try to simplify it in language that we both understand.

I think it was a president on one of his many losing campaigns who was discussing a candidate and he posed a question:

Would you buy a used car from him?

I will pose the question to you:

Would you buy a used car from Altamirano and drive away with confidence on his warranty that if anything went wrong with the car within the next 6 months you will get your money back?

Or I will give you another example. When you have to appraise this individual with respect to his testimony.

You worked hard all your life with your

spouse, you build up a successful business and now you have a few dollars and you want to take a vacation, and you go home to your spouse and you say:

I have the perfect person, I have the perfect man to watch the register, Altamirano. Is there anyone amongst you that would have Altamirano behind your register?

Is there any one among you that would have that, that you would trust him with your money?

If you don't trust him with your money, then don't trust him with their (indicating the defendants) liberty, their liberty is more important than money.

Now with respect to the defendants now taking the stand, I can tell you that the law states you are not to draw any unfavorable inferences. His Honor will so charge you tomorrow --

THE COURT: Counsellor, please don't anticipate what I will charge. I will charge in my own way what the law is, and not necessarily as you say I will charge it.

out by the events as they were unfolded during the course of the trial.

Now, the Government's entire case consisted in the main, of Mr. Altamirano. How you evaluate or how you do not evaluate his testimony is your function and your function alone, as you will be instructed tomorrow by the Court. I am not going to call Mr. Altamirano words of deprecation. He is a man who unfrocked himself before this Court.

He is a man whom the Government has utilized and has relied upon in the main to establish the existence, the formulation, the actual concreteness of the ethereal charge of conspiracy. The Government might well contend that although Mr. Altamirano is a knave and a rogue, they take their witnesses where they may find them, that neither bishops nor kings would have anything to do with people such as a Mr. Averso or Mr. Bonetti or Mr. San Martin or any of the list of characters that have been unfolded to you.

However, I submit that whether a man is a Government witness or a defense witness, he is

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2 subjected to fundamental basic tests, and standards of
3 can you believe him, does he have any particular
4 animus as against anyone, or does he want to get
5 something out of his testimony?

6 In other words, one should regard
7 Mr. Altamirano in the normal fashion that one
8 regards anybody who is trying to sell something.
9 In the case of Mr. Altamirano, he contended that
10 he had already been paid in full. Whether he
11 thought that there would be additional payments
12 to himself to his brother, to anybody else whom
13 he was interested in, is for you and you alone
14 to determine.

15 Now, I throughout the course of this trial
16 have represented only one man and one man alone.
17 I am the attorney for Louis Boyce. I represent
18 no one else. I am concerned with no one else.
19 He is my client. It is my sworn duty to the best
20 of my ability to look after his interests. And
21 what are his interests? His interests are such
22 that I have been called upon to submit to you
23 to have each and every member of this panel
24 put through the usual test of inquiry, as to
25 whether the Government has been able to establish

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8 1
2 the guilt of the defendant Louis Boyce, beyond
3 a reasonable doubt, whether the Government has
4 been able to pierce the shield of the presumption
5 of innocence; and whether it has been able to
6 sustain the burden of proof which is its, which
7 it began to assume at the commencement of the
8 trial, which lasted throughout the trial and will
9 continue throughout your deliberations in the
10 Jury room.

11 The Government set forth that conspiracy,
12 being a charge which does not possess certain
13 tangible aspects of what we call substantive
14 crimes, it would have to bring forth a little
15 bit of evidence here, a little bit of evidence
16 there, and as the Court has informed the defense
17 counsel, as well as the Government counsel, on
18 occasion there is a jigsaw puzzle in the Jury
19 room, and the Government seeks to have you
20 utilize bits of evidence in the same fashion as
21 which you have used pieces in the jigsaw puzzle
22 to bring about a conviction.

23 I submit, most respectfully, that the
24 Government is wrong. The testimony of
25 Altamirano, which is pivotal, which is fundamental

1
2 to the Government's case, has not in any way
3 substantiated, validated, corroborated, or made
4 overwhelming by any direct corroborative,
5 collaberating evidence.

6 The Government, I am sure, will endeavor
7 to refute that statement by these two documents,
8 which I will discuss in greater detail a little
9 later. The testimony of Altamirano is one of
10 a man who is a confessed participant in the
11 trafficking of narcotics. It's a man who in no
12 way is concerned as to smuggling watches. It
13 is a man who is -- whether it be addicted or
14 otherwise, partakes of cocaine.

15 It is the testimony of a man lacking in
16 the most fundamental human fiber of one man
17 looking after and protecting his brother. It
18 is the testimony of a man so completely without
19 biblical sanction as to be nothing other than
20 a modern-day narration of Cain and Abel. It
21 is the testimony of a man who has lied. And
22 the Government may well contend, but how?

23 Naturally, such a task is very difficult.
24 We lawyers function under what is known as the
25 adversary system, in a criminal case. The

1
2 Government puts its case on, when it does put
3 it on, we put our case on whether they get
4 through. I was exceedingly lucky in being able
5 to establish one concrete basic lie, insofar as
6 Mr. Altamirano's testimony was concerned, and
7 that was the direct lie as to him allegedly
8 having seen Mr. Boyce and Mr. Solimene having
9 left New York and gotten to the airport. The
10 testimony as to that is very pivotal and with
11 your permission, relatively brief, and I'd
12 like to just re-read it.

13 These were the questions and the answers
14 that were put to Mr. Altamirano.

15 Q Now, you told this Court and Jury
16 that Mr. Boyce had driven Mr. Solimene to the
17 airport. Do you remember testifying as to that?

18 "A Yes.

19 Q And did you see Mr. Boyce and
20 Mr. Solimene get in the car together?

21 A Yes.

22 Q Did you ever see them together
23 driving on that day?

24 "A Yes.

25 Q Do you know who Mr. McMullan is?

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1 William McMullan?

2 "A Yes."

3
4 And as we well know, Mr. McMullan is the
5 gentleman who is presently and who had been
6 seated throughout the trial with Mr. Sashian, and
7 I was able to read to you from a file document,
8 an official document, which had been sworn to
9 by Mr. McMullan before Magistrate Schiffman,
10 Magistrate of this Federal District, wherein
11 Mr. McMullan stated, under oath, veritably as
12 a law enforcement officer under oath, that
13 Mr. Altamirano had related to him that he,
14 Mr. Altamirano, observed the defendant Louis
15 Boyce, also known as Louis, drove the defendant
16 Francisco Solimane to John F. International
17 Airport, in June of 1971.

18 We know, I am sure, that if there been
19 a choice in believing Mr. Altamirano or Mr. Mc-
20 Mullan, that the choice would be in the veracity
21 and integrity of Mr. McMullan. And not in the
22 likes of Mr. Altamirano.

23 Mr. Altamirano narrated not one detail,
24 but a panoply of events, bizarre, unique,
25 imaginative, without substance. But on any

1
2 conceivable opportunity, wherein one saw the
3 specific corroboration, it's lacking, it's missing.

4 There was talk of a Miami transaction,
5 as to 53 kilos of heroin. Is there any pro-
6 duction of Eddie? Is there any designation
7 as to the car with the Florida license plates?
8 Is there a parking lot description? Is there any
9 thing specific that anyone could subject to the
10 cold analysis and scrutiny of "Show me?" And
11 it reached its apex when I asked Mr. Altamirano
12 as to this 53 kilo transaction, as to how or --
13 how did he ever come to the determination that
14 there was heroin in the car. And I asked him
15 did he ever open the trunk. No. He had no more
16 proof, no more substance of what was in the trunk
17 of that car than I do now.

18 The Government alleged through the testimony
19 of Mr. Altamirano that Mr. Boyce, during a very
20 substantial period in the month of June, 1971,
21 was a daily visitor to the apartment, and
22 the Government, without objection on the part
23 of any of the defense counsel, introduced in
24 evidence the lease of the apartment between the
25 owner and Mr. Avesso. They even had Mr. Milton

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in the face of an offer of an extra thousand dollars.

Joe then turns to Americo's brother, Cesar, and says, "You get the car, here's a thousand dollars."

Cesar says, "All right, I'll do it."

And then Joe says to Americo, "Look, at least go with your brother, stay outside, and if something happens, you call and tell me."

The two brothers leave the apartment, go down to the garage. Cesar goes to claim the car. The car is brought up and as he's about to get in the car, he's arrested by customs agents who are on the scene.

Americo is arrested shortly after, around the corner on Broadway and 31st Street.

Now, a significant part of the Government's case is based on the testimony of Americo Altamirano, and one of your main functions as jurors in this case is going to be to get the credibility of Americo Altamirano.

Only two of the four defendants named in the indictment are on trial. So you'll be asked to judge the guilt or innocence only of

Summation - Bashian

Mr. Boyce and Mr. Solimane, but in judging the credibility of Americo Altamirano's testimony, you must consider the testimony as it relates to all four of the defendants.

Because if you consider the testimony only as it relates to Boyce and Solimane, then you are only judging a part of his story.

And you must, in all fairness to both the Government and the defendants, judge all of his testimony.

In other words, is his entire testimony as it relates to all four of the defendants, credible testimony?

Now, as the defense attorneys have mentioned, Americo Altamirano is, himself, a criminal. He is an accomplice. He is someone who is himself involved criminally in the events that he described.

Now, no matter how much scorn and vilification the defense attorneys heap on that word, accomplice, criminal, that word is still only a label, by itself. It doesn't mean much at all.

When you deliver the fact in the jury

Summation - Bashian

room that Americo Altamirano is an accomplice, the important question to ask, or the important thing to do is to get behind the lid and ask yourself what kind of an accomplice is he, because there are all sorts of different accomplices who can testify.

For instance, you might have heard in this case a witness who got up on the stand and said "Look, it's not my fault that I got involved. I was just kind of pressured into this whole thing by the others. I had no choice.

Or a witness might get on the stand and say, I wasn't really that guilty. You know, the other ones were really the bad ones. I had a very small part in this whole operation.

Or he might say Look, I knew there was something wrong with what we were doing. I knew we were importing some contraband, but I didn't know it was heroin.

Ask yourselves, is Americo that type of an accomplice. Because if he is, then you have very good reason to say to yourselves, he's holding back, he's not telling the truth, he's covering for himself, he's trying to shift the

1 Summation - Bashian

2 blame on other people.

3 Is that the kind of an accomplice he is?

4 And the answer is no.

5 Here is an individual who freely admits
6 the part that he played in the whole conspiracy.
7 He delivered heroin. He carried money back and
8 forth. He received phone messages. He drove
9 a car.

10 He doesn't try to minimize his own part.
11 He gives an honest evaluation of his own
12 activities, as well as of the other individual.

13 He doesn't claim ignorance, saying I
14 didn't know what was going on, I thought it
15 was some other kind of contraband, I never knew
16 it was heroin.

17
18 (Continued on the next page.)
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1
2 MR. BASHIAN: (continuing) The most impor-
3 tantly, you see the reason or the motivation for
4 which he got involved, and that is very simple.
5 It is money.

6 Maybe it isn't admirable, but it certainly
7 is perfectly understandable. Look at how honestly
8 Americo faces up to his reasons for joining the
9 conspiracy. He was asked on cross examination,
10 he said, -- He was asked, "In other words, you
11 were afraid to be doing something illegal, is
12 that right?" "No." "Well, you weren't concerned
13 about -- If you weren't concerned about the contra-
14 band watches, why were you concerned about -- When
15 you said to Detective Connel, "You'd better tell me
16 the truth, or I'm leaving," and Americo said, "I
17 was concerned about the life, but once you told --
18 once he told you that he's dealing in heroin, that
19 didn't bother you."

20 And Americo says, "At no moment was I wor-
21 ried by whether they were watches or heroin."

22 Then Americo says that he wasn't bothered
23 by it because Detective Connel told him that Americo
24 was going to take care of it.

25 Now, Americo is a criminal. He admits it.

He doesn't try to come in here like a Stanley school teacher, pretending to have a type of morality.

He admits he's in this thing for money, and how much money is that? He's going to stand and make \$5,000 on each transaction, that is, each time a load of heroin comes in, America is going to make \$5,000.

Compare this to the money he was making in that shoe factory. \$2 an hour, 40 hours a week. What's that, \$80 a week?

So you can see why he went into this thing.

This doesn't justify his actions, but it certainly goes a long way to explain them.

The defense attorneys claim, Well, he's a criminal, you can't believe him. There is a distinction, I think, to be drawn here. He's a criminal in the sense that he is involved in criminal illegal activities, but the question that you want to ask is, not is he a moral man, not is he the kind of man who I will trust my money with, not is he the kind of man that I would buy a used car from, as the defense attorney suggests.

That is not a morality play or a morality condensed.

1
2 The one question that you must ask yourselves
3 is this: Was he telling the truth when he told us
4 about his criminal activities and the criminal
5 activities of the other defendants.

6 In other words, he's a criminal. He's in-
7 volved in criminal activities. But was he being
8 truthful with you when he told you about those
9 criminal activities.

10 Now, the defense attorneys would have you
11 believe that Americo Altamirano pulled these names
12 out of a hat. Mr. Joyce's name, Mr. Solimene's
13 name; that he's making the whole story up.

14 And Mr. Rosenberg says to you, it could
15 be your husband, it could be your brother. If he
16 had continued his name, he'd be sitting there in-
17 stead of Mr. Solimene.

18 Well, let's see now if that's entirely
19 true, because now we come to one very important
20 criterion for judging the testimony of any witness,
21 and most importantly, a witness who is an accomplice,
22 and that is, the point of corroboration.

23 In other words, you're going to ask your-
24 selves, is there anything in this case which cor-
25 roborates or verifies what Americo Altamirano

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... and ... the ... days ... all ...
... and ... the ... whole ... up,
... the ... of a hat, and he
... of a hat.

Well, let's see now. The first thing American tells us is that he met somebody named Julius Bonetani on the 14th of May in the International Club. That's a specific name, a specific place, and a specific date.

[illegible]

Declaração:

and go to the address and be there; but the name of the person to be there, and the hotel address, were there, the document is dated 1971.

1987-1988

THE UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D. C. 20535

1 St. Moritz Hotel, and he said the meeting took
2 place on the 20th of May, and Ramirez and Castro
3 and Bonatti were there, and Bonatti had said that
4 there is one guy who is going to come up on the
5 28th, so we have to wait for him.
6

7 But what do these records from the St. Moritz
8 Hotel show? They show that on the 26th of May,
9 Hector Castro checked into the Hotel, and that he
10 left on the 29th, and this record shows that on
11 the 28th of May, Mr. Carlos Ramirez joined Hector
12 Castro in the same suite, 4033-04.

13 They are telling you, he could have pulled
14 those names out of his hat. It could have been your
15 husband, it could have been your wife.

16 But your husband's name isn't on that paper.
17 The names of Castro and Ramirez are on these papers.

18 Then Antonio Castro has the actions that take
19 place in Joseph Bonatti's apartment, and he gives
20 you an address, 210 West 47th Street, and he gives
21 you an apartment number, apartment number 33.

22 So Mr. Bonatti goes out and sees that he
23 can find, as far as a house is concerned.

24 He comes up with a lease, and he brings a
25 witness in court, and you can take a look at this

1
2 lease later on.

3 Mr. Rosenberg said, it could have been your
4 husband, it could have been your father.

5 Is your husband's name on the bottom of
6 this list? The name on the bottom of this lease
7 is Joseph Averso, apartment 63, 310 West 47th Street.

8 Americo make that up, too?

9 And remember that Mr. Silvers identified
10 Joseph Averso, and he said, yes, that's the man
11 that works in the International Club as a night
12 manager.

13 Then we had these airline records. Remember
14 here that Americo said that Bonetti, Castro and
15 Ramirez all left on the 29th, and he says Bonetti,
16 once we got to the airport, told us, well, I'm
17 not going there on Aerolineas Argentinas with the
18 rest of you. I'm going Pan Am.

19 What does the Pan American record show?
20 The Pan American record shows Flight 301 on the
21 29th of May, which left at 9:15, Mr. Bonetti was
22 an add-on. He had no prior reservations.

23 More significantly, what do the Aerolineas
24 Argentinas records show? Those records show that
25 earlier in that day Castro, Ramirez and Bonetti

all made reservations on the Berlin-Lima flight, and they had given the St. Martin Hotel as a call-back number.

Later on in that day Bonetti called, canceling his flight to Berlin, and if you look at the bottom of the passenger manifest, you will see written in in pen the names Bonetti, Castro and Ramirez, and then the name Bonetti crossed out.

The passport of Mr. Francesco Solimene, a most significant document. Remember firstly that Amerigo said that some time in mid-June, Solimene had told him, I just got my passport within those last few days.

This passport was issued the 11th of June.

Now, recall Amerigo's testimony wherein he stated that when Solimene got back to the country in the first part of July, he told them, and went to Buenos Aires for a while, we went to Uruguay, and then I came back to the United States via Brazil.

Looking at this, what does that tell us? Is he the one that actually put the names in in this passport? That's the question we have to ask. That Solimene

was in Buenos Aires on or about the 28th of June,
that since he was in Uruguay on the 1st of July?
That since he returned to the United States via
Brazil?

Then America tells us that Solizana had
told them that Sanmartin was going to stay at
the Edison Hotel, and that he was coming in the
country on the 6th of July.

Here's Sanmartin's passport, showing him
entering on the 6th of July, and Hotel Edison
records show that Sanmartin checked into that
Hotel on the 6th of July also.

In all these instances then, ladies and
gentlemen, the testimony of Amelio Altamirano,
what he is telling you, was corroborated, sub-
stantiated, so that when the defense attorneys
say he was pulling these stories out of the air,
you know for a fact that that is not so. That
is simply not the case.

And in all these instances, this corrobor-
ation was found and was discovered by McMillan
after he had talked to Amelio Altamirano.

So in order to believe that Amelio Altamirano
is a liar, we've got to come now believe,

1
2 strange as this may sound, that he went around
3 and planted all these records, or he knew that
4 they all existed before he opened his mouth to
5 McMullan. That simply cannot be the case.

6 Now, the strongest points of corroboration
7 we haven't talked about yet.

8 They are, firstly, this piece of paper
9 here. Recall that Americo said that when Solimene
10 got back from Buenos Aires, he told them that while
11 he was in Uruguay, he gave Sanmartin a piece of
12 paper with coded telephone numbers on it.

13 When Sanmartin was arrested, Agent Keith
14 searched his suit clothes and found a piece of
15 paper on it, and you can take this paper into the
16 jury room with you, and there are three names here.
17 The first name is Franco, second name is Joe, the
18 third name is Arlindo.

19 Next to Franco are the numbers 638-6044.

20 If you look on the New York Telephone Com-
21 pany records for Mr. Solimene's telephone, you
22 will see that Solimene's number is 749-7055.

23 In other words, if you add the digit one
24 to every one of those numbers in that coded number,
25 you come up with Franco's true number.

There are only two explanations for this

1
2 telephone record. Either Louis Boyce was in the
3 apartment, calling his fiance, whom he had known
4 for several months prior to September, or Joseph
5 Averso was trying to get ahold of Louis Boyce and
6 figured or thought that he could probably find
7 Louis at his fiance's house.

8 That's the explanation, the only explanation
9 that you can make, out of these telephone
10 records.

11 But in the face of all this, the defense
12 attorneys tell you, Americo is lying, Americo is
13 lying, he is lying to save himself, he is lying
14 to try to get a lower sentence.

15 Let me ask you a question. He did not --
16 Americo did not testify at his own trial. He
17 didn't lie to save himself at his own trial, like
18 his brother did.

19 And how easy would that have been for him
20 to do? His brother got on the stand and told a
21 story full of lies, saying he didn't know there
22 was heroin in the suitcases, that he thought it
23 was watches. Now, why couldn't Americo have done
24 the same thing? How easy would it have been for
25 him to get on the stand, essentially corroborate

1
2 his brother's story, and tell the same bald-faced
3 lie?

4 He did not do it, ladies and gentlemen.

5 And the thing that I think comes to your
6 mind is you figure, if Amerigo were to lie, wouldn't
7 he have lied in his own trial? And the answer is,
8 yes, he would have.

9 And if he's lying now, why doesn't he improve
10 on his story? In other words, if he is going to
11 tell a lie, why doesn't he tell a really good lie?
12 Why doesn't he make the story really juicy? Why
13 doesn't he say, yes, Louis Boyce was present in
14 the apartment on the 9th of July when we were count-
15 ing the money. Wouldn't that have been a great
16 little piece of evidence? Louis was there? He
17 and Cesar were counting the money. How easy would
18 it have been for him to say that?

19 If he was really going to lie, tell the best
20 story, Amerigo, don't tell a half-baked story.

21 He told you that he never saw what was in-
22 side of the suitcases in Eddy's car. If he were
23 going to lie, why didn't he tell you, yes, he had
24 seen them, they took them up to an apartment, and
25 that they opened them and in the presence of Louis
Boys he saw heroin.

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Bashian - summation

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2 How hard would it have been for him to lie
3 like that? How hard would it have been for him
4 to say, yes, they did discuss price? Another
5 thing you want to consider when you judging the
6 credibility of the witness is how he stood up on
7 cross examination. Here you can refer to your own
8 recollection of how Americo looked and appeared,
9 both when he was asked questions by myself, and
10 asked questions by defense attorneys. What was
11 it exactly that came out on cross examination?
12 Were any deep, dark secrets that the Government
13 was trying to hide brought out on cross examina-
14 tion? Absolutely none. The only thing, in fact,
15 that came out on cross examination was that which
16 further strengthened the Government's case. For
17 instance, it came out on cross examination that
18 when he was not there watching the telephones on
19 the weekends, that Joe or Solimena would be watch-
20 ing them. It was on cross examination, after being
21 prodded by defense attorneys, that Americo grudgingly
22 gave a description of the St. Moritz room, which
23 proved beyond a reasonable doubt that he was there.
24 It was on cross examination that it came out that
25 Bonetani did tell him what was done with the money

1
2 in that first suitcase, namely, that went to the
3 airline's employee. It was on cross examination
4 that he frankly admitted to you his motive for
5 getting involved in this case. These are the kinds
6 of things that came out under the intensive cross
7 examination by these two able trial attorneys.
8 It was on cross examination that the humorous side
9 of criminal life was brought out where Solimene was
10 affectionately referred to as "Fatty" and you heard
11 of criminals singing songs as they were on their
12 way to the airport. This came out on cross examina-
13 tion. They did not destroy the Government's case,
14 they strengthened it. Then, the cross examination
15 of Mr. Krieger, Boyce's attorney. Here, Ameriso
16 testified to at least seven or eight different
17 meetings with Louis Boyce. He met him the first
18 time outside Joe Averso's house. He met him in
19 Averso's apartment when Bonetti called from South
20 America. He met him in the deal where the heroin
21 came from Eddy. He saw him every day while Solimene
22 was out of the country. All of these times, he
23 saw him with his own eyes, Louis Boyce.

24 You know that cross examination is the great-
25 est tool for bringing out the truth, so Mr. Krieger

1
2 gets up and he starts cross examining. What were
3 the questions about? What was Americo questioned
4 about? Was he questioned about any one of those
5 meetings? Was he, no. Dr. Krieger picked up a
6 dollar bill that had some cocaine wrapped in it
7 and waved it at Americo: "Isn't this cocaine, and
8 weren't you arrested?" Americo said, "Yes." This
9 was the high point of the entire cross examination
10 of Americo, as it applied to Louis Boyce. Not a
11 word about any of these substantive meetings, not
12 one single word. That cocaine is another example
13 of where Americo showed you his good faith. He
14 could have said, "I had this cocaine on me, but I
15 was selling it." You probably would have believed
16 him. He is dealing in heroin, why couldn't he be
17 dealing in cocaine? He told you, at least to him-
18 self, that he used cocaine, and used it a few days
19 earlier. If he had said something else, would you
20 have believed him? You probably would have. He
21 came right out and said something very damaging
22 to himself, and possibly to his credibility. Why,
23 because it didn't make any difference at all. I
24 think everybody in the courtroom understood we are
25 not concerned with what happened to one and a half

grams of heroin. We are concerned about his meetings with Louis Boyce, about which he testified to, and about which he was not asked one single question on cross examination.

Now, Mr. Holger points out, or he tells you, that Americo lied when he said that he saw Boyce and Solimene leave New York to go to the airport. Let us get that story straight. When Americo was on the witness stand testifying on direct examination, he told you that Joseph Avarso had told him that Boyce drove Solimene to the airport. Then, when he got out to the airport, I asked him whom did he see? He said, "Solimene." Solimene told him, "Boyce drove me out here." He never once under direct examination said, "I saw Louis Boyce drive Solimene to the airport." Never once. Other people told him and that's what he told you.

Now, it just so happens in one of the legal affidavits drafted by Mr. McMullan, a statement is made to the effect that Americo saw Boyce driving Solimene to the airport. Keep in mind, this is not an affidavit written by Americo. It is not a recording of a statement that he made with his own mouth. It is what McMullan wrote down. Now,

1
2 there is one of two possibilities. Either McMullan
3 was incorrect when he wrote that, or Americo was
4 lying to McMullan when he reportedly told him that.
5 You saw for yourselves the difficulty that Americo
6 had with the interpretation. A lot of times he
7 didn't understand the thrust of the question. Isn't
8 it likely that Mr. McMullan possibly made a mistake
9 when he wrote that down? Look at it this way: If
10 Americo did lie when he told that to McMullan, why
11 would he change his story now on the witness stand
12 so that it is weaker testimony? In effect, the ver-
13 sion he is giving you on the witness stand is not
14 as strong as what McMullan wrote down. Would a man
15 in his right mind call a lie and then weaken that
16 lie by saying something that was not as strong?
17 Of course not. It is just -- It just doesn't make
18 sense. If it happened the other way around, if he
19 said on the witness stand, "I saw Boyce with my
20 own eyes," and Mr. Krieger was able to show you
21 that at a prior time he said that he never saw
22 Boyce, then you might say that Americo was trying
23 to improve on his story. Here, he is telling you
24 a story not as strong as what he purportedly told
25 McMullan. Would he do that if he was lying? Now

Bashian - summation

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2 hard would it have been for him to stick to the
3 same story? Here again he is showing you his good
4 faith. There was apparently a mistake when McMillan
5 wrote that out. America on the stand sets it straight,
6 telling a weaker version, and this is the man who
7 is telling you this weaker version under oath whom
8 these defense attorneys are trying to have you be-
9 lieve is intentionally putting these people into
10 the crime. It comes back to the same point, if he
11 wanted to put these people away, why didn't he im-
12 prove on his story, why didn't he make Louis Boyce
13 doing more things, because he was telling the ab-
14 solute truth -- the absolute, unvarnished truth.

15 MR. BASHIAN: May I take exception to that
16 remark. He is vouching for the credibility of his
17 own witness.

18 THE COURT: Read back the statement immedi-
19 ately preceding.

20 (Record read.)

21 That will be for the jury to decide. Con-
22 tinue.

23 MR. BASHIAN: Mr. Forester's main point to
24 you, ladies and gentlemen of the jury, is that
25 there is not one Agent who can say that there is

1 watching the phone, whether this guy or that guy.
2 He doesn't care who is bringing the tickets. He
3 doesn't care who's going to get the car. He doesn't
4 care who the contact man is in Buenos Aires. These
5 are things that other people have to worry about,
6 but not him. He's there at the crucial times,
7 and only the crucial times, and by this ingenious
8 process of insulation he has kept himself away
9 and apart from the actual day-to-day operation of
10 the conspiracy.
11

12 What it really comes down to in the end,
13 ladies and gentlemen, is that the Government is
14 not asking you to convict these defendants solely
15 and only on the testimony of Enrique Alzamirano.
16 That is not what we are asking at all. The testi-
17 mony of Enrique Alzamirano must be considered as
18 it relates to every corroborative bit of testi-
19 mony the Government has presented. All the hotel
20 records, all the flight manifests, all the Customs
21 declarations, all the identifications of other
22 people by photographs, all the passport entries.
23 That testimony must be considered in the context
24 of all of the corroborations which the Government
25 has given. When you consider the testimony in

1
2 that context, and especially when you consider
3 this piece of coded paper with the telephone
4 numbers, and especially when you consider these
5 telephone calls going from Joe Averso's apartment
6 to the DiCicci house, when you consider all of
7 these facts, you can see quite plainly that Americo
8 Altamirano did not pull the names of these people
9 out of a hat. He did nothing of the sort. He is
10 telling you the truth and that truth is corrobor-
11 ated and substantiated by all of these other exhibits.

12 MR. KRITCHEL: I respectfully renew my applica-
13 tion. He is again vouching for the credibility of
14 his witness.

15 THE COURT: You will state that before. The
16 question of credibility is for the jury. Please
17 do not do so previous to your objections. Wait
18 until there is a substantial statement by counsel
19 to the effect that he believes the witness is tell-
20 ing the truth.

21 MR. BASHIAN: Americo is a criminal. We
22 are not asking that you admire him or respect
23 him, that you make him a close counselor. The
24 only question is: Do you believe him when he is
25 telling you that he is describing as far as the

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2 criminal activities are concerned, and the motive-
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criminal activities are concerned, and the motive-
line of these defendants. That is the sole ques-
tion before you. As far as all the supposed points
raised by Mr. Rosenberg, that his story is improb-
able, I think it has been established that there
was sound reason that was done and nothing about
the story is improbable.

As far as the point of Mr. Krieger, where
he alleges that there is no contact between Louis
Bayer and the heroin, that's not entirely true,
and the real reason for the lack of contact that
Mr. Krieger talks about is the fact that Louis
Bayer was the big man, he was the man to whom
people were referring, and in the whole the de-
cision, the one everyone was responsible to. He
was the money man in the operation. Now can America
be fabricating what he said when you consider these
telephone records. That's what it really comes
down to, and as for the American's motives to lie,
we get a lighter sentence, I think it was estab-
lished beyond any doubt at indirect examination
that no promise of any sort was ever made to
America. And even if he told that if he testi-
fied he would get a sentence of so much punish-

1
2 sent. In fact, the Judge asked him, "Did any-
3 body tell you that I was going to do before I
4 sentenced?" And America said, "No." He was tak-
5 ing his chances. Of course, he had hopes that
6 the sentence might be lighter, but he had no
7 promises of any sort.

8 The other significant thing is this: He
9 was sentenced before this trial even began. So,
10 as far as he was concerned, his case was over
11 and done with before this case started. If he
12 had not been so sentenced, and if he testified
13 in this trial, and then you might think he hasn't
14 even been sentenced yet. He probably thinks the
15 better he does live, they will give him a lighter
16 sentence. That is not the case. He was sentenced
17 weeks before this trial began. These are the things
18 that you have to consider when you ask yourselves--
19 when you raise these questions that the defense
20 attorneys say about possible motives to lie.

21 America hoped that he might get a lighter sentence,
22 but he did not lie to get it. So, I think, ladies
23 and gentlemen, when you consider all of the Govern-
24 ment's evidence, when you consider the troops and
25 the hundreds of other witnesses, when you look at

1
2 exactly what part Mr. Soliman played, when you
3 look exactly at what part Mr. Joyce played, I
4 think you will come to the conclusion that the
5 Government has established the guilt of the de-
6 fendants beyond a reasonable doubt. Thank you.

7 THE COURT: Members of the Jury: I am
8 just considering whether to Charge you today.
9 I guess, the hour is too late. I will remain
10 with my original plan, which is to Charge you
11 tomorrow at 10:30 o'clock. I am sending you home
12 now with the same admonition I have so many times
13 given you, but with the increased solemnity which
14 the admonition must derive from the fact that
15 you are rapidly approaching the point at which
16 you must deliberate on the guilt or innocence of
17 these people who are on trial. Do not discuss
18 the case among yourselves, do not discuss it with
19 others, do not be where it is discussed, do not
20 permit anyone else to talk to you about it. It
21 is not a proper subject to discuss with the 15th
22 and 16th jurors, that is, your husbands and wives,
23 and your children at home, even though you may
24 feel they know more about life and trials than
25 you do. You, at least, have heard the testimony,

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK } ss

Dolores Byrd

being duly sworn,

deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

That on the 13th day of October 1977 he served a copy of the within

Appendix

by placing the same in a properly postpaid franked envelope addressed to:

Michael Clutter, Esq.

1409 Peachtree St. NE

Atlanta, Ga 30309

and deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Court House, ^{225 Cadman Plaza East} ~~Washington Street~~, Borough of Brooklyn, County of Kings, City of New York.

Dolores M Byrd

Sworn to before me this

13th day of October 1977

Barbara Allen
BARBARA A. ALLEN
Notary Public, State of New York
No. 24-4646824
Qualified in Kings County
Commission Expires March 30, 1979